IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 32915 of 2007(R)

OS.187/1999 of PRL.SUB COURT,IRINJALAKUDA
CMA.33/2006 of MUNSIFF COURT, KODUNGALLUR

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PETITIONERS:

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1. SHAIJA NAZER,D/O.NAIDATHPARAMBIL
   SAIDALI, KIZHUPULLYKARA DESOM, KATOOR VILLAGE
   W/O. PADIYATH, KARKIDAKAVALLIYIL MUHAMMED NAZER,
   ERIYAD VILLAGE DESOM, KODUNGALLUR TALUK.

2. NABEESA,W/O.NAIDATHPARAMBIL SAIDALI,
   KIZHUPULLYKARA DESOM, KATOOR VILLAGE
   MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

AJAYAGHOSH,W/O.AVINIPPILLY KRISHNANKUTTY
S.N. PURAM VILLAGE, KODUNGALLUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 32915 OF 2007

Dated this the 6th day of November, 2007

J U D G M E N T

This writ petition is filed against the order of the Subordinate Judge, Irinjalakuda in C.M.A. 33/2006. The defendants in the suit filed an application for setting aside the ex-parte decree along with a petition to condone the delay of more than four years. The averments for condoning the delay was that they did not receive any notice and that they came to know about the decree only when it was put in for execution.

2. The trial court in para. 5 of the order had specifically stated that the first and second defendants were served on 22.05.1999 and the 3rd defendant on 24.05.1999. Service on fifth defendant was served by affixture. The court on perusal of the records was able to find out that summons have properly been served on the parties. The said view was reappreciated in appeal by the appellate judge and he did not find any ground to deviate from the findings arrived at by the court below. For invoking the jurisdiction under Article 227, there must be apparent error or illegality. If not, this court cannot interfere with the concurrent findings of fact entered into by the court below. The Apex court has also cautioned that if there are concurrent finding of fact, this court shall not substitute its view for the concurrent findings of the court below. Therefore I find absolutely no merit in the writ petition.

The writ petition fails and it is accordingly dismissed.

M.N.KRISHNAN, JUDGE

vps